

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol

20 Gorffennaf 2018

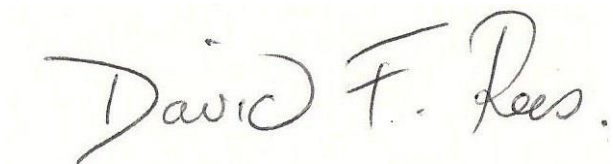
Annwyl Mick,

Cyfraith yr UE Yng Nghymru: Beth fydd yn digwydd yn ystod cyfnod pontio Brexit?

Mae gohebiaeth ynghlwm gan y Pwyllgor Materion Allanol a Deddfwriaeth
Ychwanegol at Ysgrifennydd y Cabinet dros Gyllid.

Gallai fod o ddiddordeb i chi a'r Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol yng nghyd-destun eich gwaith ar gysylltiadau rhyng-sefydliadol.

Yn gywir,



David Rees AC,

Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Mark Drakeford AC
Ysgrifennydd y Cabinet dros Gyllid

20 Gorffennaf 2018

Annwyl Mark

Cyfraith yr UE yng Nghymru: Beth fydd yn digwydd yn ystod cyfnod pontio Brexit?

Ers mis Mehefin, mae'r Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol wedi bod yn trafod y trefniadau y bydd angen eu gwneud yng Nghymru, ac yn y Cynulliad yn benodol, i baratoi ar gyfer cyfnod pontio Brexit.

Mae'r broses hon, i raddau helaeth, wedi bod yn fater o ddarogan yr hyn y gallwn ei ddisgwyl yn rhesymol o ran sut y bydd cyfraith yr UE yn gweithredu yn ystod y cyfnod pontio, a hynny wrth inni aros am fanylion pellach ynghylch cynigion Llywodraeth y DU.

Mae'r dystiolaeth sydd wedi dod i law wedi cael ei chyhoeddi, ac mae ar gael ar ein gwefan.

Ar hyn o bryd, rydym yn rhannu ein trafodaethau ynghylch y cyfnod pontio yn dri maes:

1. Y mecanwaith cyfreithiol ar gyfer cynnal cyfraith yr UE yn ystod y cyfnod pontio;
2. Rôl y Cynulliad wrth graffu ar gyfraith ddrafft yr UE yn ystod y cyfnod pontio;
3. Y llwybrau rhynglywodraethol y gall Llywodraeth Cymru eu defnyddio i leisio barn mewn perthynas â chyfraith yr UE yn ystod y cyfnod pontio.



Mecanwaith cyfreithiol

O ran y mecanwaith cyfreithiol ar gyfer cynnal cyfraith yr UE yn ystod y cyfnod pontio, mae'r dystiolaeth sydd wedi dod i law yn awgrymu y bydd y Cytundeb Ymadael a'r Bil Gweithredu yn darparu ar gyfer mecanwaith sydd, i raddau helaeth, yn dyblygu darpariaethau perthnasol Deddf y Cymunedau Ewropeaidd 1972. Mae'r wybodaeth yr ydym wedi'i chael gennych yn cadarnhau y bydd y Bil Gweithredu yn rhoi effaith i'r cyfnod gweithredu.

Rydych wedi datgan: "O ran egwyddor, byddem yn disgwyl gweld mesur uchel o debygrwydd rhwng yr arfer yn awr ac yn ystod y cyfnod pontio ac y byddai hyn yn cynnwys y rôl sydd gan Lywodraeth Cymru."

Rydym wedi cytuno mai'r egwyddor a ganlyn ddylai fod yn sail i'r mecanwaith cyfreithiol a ddarperir:

O ran trosi, gweithredu a gorfodi cyfraith yr UE yng Nghymru, rydym yn disgwyl y bydd llawer o debygrwydd rhwng yr arfer cyfredol a'r arfer yn ystod y cyfnod pontio, o ran rôl Llywodraeth Cymru a Chynulliad Cenedlaethol Cymru; hynny yw, bydd gan y Cynulliad a Llywodraeth Cymru bwerau trosi a gweithredu llawn, mewn perthynas â Chymru, dros feysydd polisi nad ydynt wedi'u cadw yn ôl.

Byddwn yn ddiolchgar o gael eich ymateb i'r egwyddor hon. Bydd yn fan cychwyn ar gyfer ein hasesiad o ddarpariaethau'r Bil Gweithredu sy'n berthnasol i'r cyfnod pontio, unwaith y bydd wedi'i gyhoeddi.

Rôl graffu'r Cynulliad

Mae'n amlwg y bydd angen sicrhau bod trefniadau'r Cynulliad ar gyfer craffu ar gyfraith yr UE yn newid mewn pryd ar gyfer y cyfnod pontio.

Yn ôl testun y Cytundeb Ymadael drafft, bydd y trefniadau ar gyfer monitro sybsidiaredd, sef yr agwedd fwyaf ffurfiol ar graffu ar ddeddfau drafft yr UE, yn



dod i ben ym mis Mawrth 2018. Ar hyn o bryd, mae'r trefniadau hyn yn dibynnu ar broses o ryngweithio â threfniadau craffu Ewropeaidd yn Senedd y DU; yn y pen draw, maent yn seiliedig ar Erthygl 5 o'r Cytuniad ar yr Undeb Ewropeaidd.

Rydym yn bwriadu cysylltu â'n cydweithwyr yn nau Dŷ'r Senedd er mwyn trafod i ba raddau y gallwn barhau i ryngweithio â threfniadau craffu Ewropeaidd y Senedd yn ystod y cyfnod pontio.

Mae'r broses o ddarparu dogfennau'r UE yn hynod bwysig inni. Nodwn y bydd Senedd y DU, o dan y Cytundeb Ymadael drafft, yn parhau i gael dogfennau yn uniongyrchol gan sefydliadau'r UE yn ystod y cyfnod pontio. Byddwn yn trafod y cam o drosglwyddo'r ddogfennaeth hon i'r deddfwrfeydd datganoledig gyda'n cydweithwyr yn Nau Dŷ'r Senedd.

Ar hyn o bryd, rydym yn trafod y lefel o wybodaeth y byddem yn dymuno ei chael gan Lywodraeth Cymru yn ystod y cyfnod pontio.

Amgaeaf gopïau o'r ohebiaeth a anfonwyd gennym at bwyllgorau yn nau Dŷ'r Senedd.

Cysylltiadau rhynglywodraethol sy'n ymwneud â'r UE yn ystod y cyfnod pontio

Rydym yn gwerthfawrogi bod gwaith ar ddiwygio cysylltiadau rhynglywodraethol ar y gweill ar hyn o bryd, a hynny o dan nawdd Cyfarfod Llawn y Cyd-bwyllgor Gweinidogion.

Nid yw manylion y trefniadau sefydliadol ar gyfer rheoli'r berthynas rhwng yr UE a'r DU eto wedi cael eu cytuno. O ganlyniad, nid yw rôl y Llywodraethau a'r deddfwrfeydd datganoledig yn y trefniadau hyn yn glir.

Rydym yn falch o nodi bod Llywodraeth y DU yn rhagweld y bydd yn cynnal y system gyfredol o gynnwys y gweinyddiaethau datganoledig yn y broses o ddatblygu safbwynt terfynol Llywodraeth y DU ar gyfreithiau drafft yr Undeb Ewropeaidd sy'n effeithio ar feysydd datganoledig.



Gan nad oes gennym ragor o wybodaeth ar hyn o bryd, rydym wedi cytuno ar yr egwyddor a ganlyn i ategu ein gwaith craffu yn y dyfodol ar y manylion hyn wrth iddynt ddod i'r amlwg:

Fan lleiaf, ni ddylid lleihau cyfranogiad Llywodraeth Cymru i gynrychiolaeth y DU yn yr UE yn ystod y cyfnod pontio, waeth beth fydd ffurf y gynrychiolaeth honno yn y pen draw.

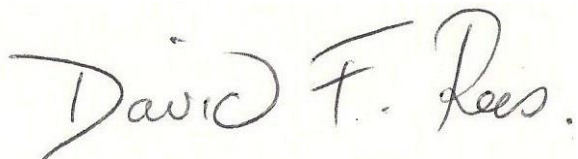
Byddwn yn ddiolchgar o gael eich ymateb i'r egwyddor hon.

Unwaith y bydd rôl y Llywodraethau datganoledig yn dod yn fwy eglur, byddwn yn gallu trafod ein dull o graffu ar y trefniadau hyn.

Rwyf wedi ysgrifennu yn yr un modd at yr Is-ysgrifennydd Seneddol ar gyfer Ymadael â'r Undeb Ewropeaidd. Rwyf wedi anfon copi o'r llythyr hwn at Gadeirydd Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Cynulliad, a hynny yn sgil ei waith ar gysylltiadau rhynglywodraethol.

Edrychaf ymlaen at eich ymateb.

Yn gywir,



David Rees AC, Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Amg. Llythyr at Syr William Cash AS, Cadeirydd Pwyllgor Craffu Ewropeaidd Tŷ'r Cyffredin; Llythyr at yr Arglwydd Boswell, Cadeirydd Pwyllgor Dethol yr Undeb Ewropeaidd, Tŷ'r Arglwyddi.

CC: Mick Antoniw AC, Cadeirydd, Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Cynulliad Cenedlaethol Cymru



Sir William Cash MP
Chair of the European Scrutiny Committee
House of Commons
London
SW1A 0AA

20 July 2018

Dear Sir William,

EU law in Wales: What happens during the Brexit transition?

Since the start of June, the External Affairs and Additional Legislation Committee has been considering the arrangements that need to be made in Wales, and the Assembly in particular, to prepare for the Brexit transition period.

This has been, in the large part, as exercise in determining what we can reasonably anticipate in terms of how EU law will operate during the transition period, as we await further details of the UK Government's proposals.

The evidence we received has been published and is available from our website.

At this point in time, we are marshalling our consideration of the transition period into three areas:

1. The legal mechanism for maintaining EU law during the transition period;
2. The Assembly's role in scrutinising draft EU law during the transition period; and
3. The inter-governmental routes available to the Welsh Government to make representations in relation to EU law during transition.

We have written to the Welsh and UK Governments in relation to these areas, with a particular focus on the first and third areas.



I have enclosed a copy of our correspondence with the UK Government.

Assembly scrutiny

In terms of the second area, it is clear that the Assembly's arrangements for the scrutiny of EU law will need to change in time for the transition period.

According to the text of the draft Withdrawal Agreement, subsidiarity monitoring arrangements, the most formal aspect of the Assembly's scrutiny of draft EU laws, will cease in March 2018. As you are aware, these arrangements currently rely on interaction with the European scrutiny arrangements in the UK Parliament and are ultimately based on Article 5 of the Treaty on European Union.

We regret the loss of the subsidiarity principle and the formal role it gave to the devolved legislatures through the UK Parliament.

Consequently, the scrutiny arrangements that are agreed in Parliament may affect how we construct our scrutiny arrangements in the Assembly.

To that end, I would be grateful for your view on how arrangements for EU scrutiny in Parliament during transition are developing.

EU documents

Of crucial importance to us is the provision of EU documents and UK Government Explanatory Memoranda (or similar) during the transition period. We note that, under the draft Withdrawal Agreement, the UK Parliament will continue to receive documents directly from the EU's institutions during the transition period.

I would welcome your view on whether you would be willing to consider facilitating the onward passage of this documentation to the Assembly.

Discussion with the UK Government

I would be most grateful if you could keep us informed of discussions between the UK Parliament and the UK Government on future EU scrutiny arrangements.



Additionally, I would appreciate your consideration of whether the European committees of the devolved legislatures (or their officials as appropriate) could be invited to participate in discussions with the UK Government, if issues that might affect the devolved legislatures are being considered.

In making these requests, I want to recognise the positive relationship that has been fostered between the European Committees of the UK and I hope that this can continue through transition.

I will keep you informed of our work in this area. I look forward to your response and look forward to meeting you again in Cardiff for the next Inter-parliamentary Forum on Brexit where I hope we can consider some of these issues.

I have written in similar terms to Lord Boswell, Chair of the EU Select Committee. I have also copied this correspondence to the Cabinet Secretary for Finance, Mark Drakeford AM; the Parliamentary Under Secretary of State for Exiting the European Union, Robin Walker MP; and Joan McAlpine MSP, Chair of the Culture, Tourism, European and External Relations Committee.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D' and 'R'.

David Rees AM, Chair of the External Affairs and Additional Legislation Committee
Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Enc.: Letter to Robin Walker MP, Parliamentary Under Secretary of State for Exiting the European Union.

CC: Mark Drakeford AM, Cabinet Secretary for Finance; Robin Walker MP, Parliamentary Under Secretary of State for Exiting the European Union; Joan



McAlpine MSP, Chair of the Culture, Tourism, European and External Relations Committee.



Lord Boswell
Chair of the European Union Select Committee
House of Lords
London
SW1A 0PW

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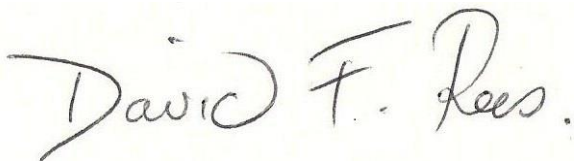
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David Rees AM, Chair of the External Affairs and Additional Legislation Committee

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